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*Kevin L. Smith*

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## IN RE THE ADOPTION OF R.W.L.

Appellant,

VS.

Appellees.

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No. 84A01-0801-CV-27

The Honorable David R. Bolk, Judge

Cause No. 84C01-0501-AD-1

**July 30, 2008**

**BAILEY, Judge**

## **Case Summary**

Rusty L. appeals the grant of a Petition for Adoption of J.R.M. filed by James and Susan M. We affirm.

## **Issue**

Rusty raises the sole issue of whether the trial court clearly erred in granting the petition.

## **Procedural History**

When J.R.M. was three months old, he was placed in the custody of James and Susan. Later, they were appointed as J.R.M.'s guardians and petitioned to adopt him when he was almost two years old. Rusty, J.R.M.'s biological father, contested the adoption.

When J.R.M. was almost five years old, the trial court terminated the parental rights of Rusty and Lacey L.<sup>1</sup> to J.R.M., granted the adoption, and changed the name of the child from R.W.L. to J.R.M. Rusty now appeals.

## **Discussion and Decision**

### **I. Standard of Review**

Rusty argues that the trial court clearly erred in making its findings.

When reviewing a trial court's ruling in an adoption proceeding, we will not disturb that ruling unless the evidence leads to but one conclusion and the trial judge reached an opposite conclusion. We will not reweigh the evidence but instead will examine the evidence most favorable to the trial court's decision together with reasonable inferences drawn therefrom to determine whether sufficient evidence exists to sustain the decision. The decision of the trial

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<sup>1</sup> Lacey contested the adoption. Later, she entered into a written agreement with James and Susan and withdrew her objection on the condition that the agreement would be submitted to the trial court. The trial court approved the agreement.

court is presumed to be correct, and it is the appellant's burden to overcome that presumption.

In re Adoption of M.A.S., 815 N.E.2d 216, 218-19 (Ind. Ct. App. 2004) (citation omitted).

## II. Analysis

A parent's consent to adoption is not required, where a child is in the custody of another person, if the parent, for at least one year: "fails without justifiable cause to communicate significantly with the child when able to do so"; or "knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree." Ind. Code § 31-19-9-8(a)(2)(A) and (B). Furthermore, a trial court may declare a parent to have abandoned a child "if a parent has made only token efforts to support or to communicate with the child." I.C. § 31-19-9-8(b). Here, the trial court found that all three of the above criteria had been established. However, the finding of any one of them would make Rusty's consent unnecessary. See In re Adoption of T.W., 859 N.E.2d 1215, 1218 (Ind. Ct. App. 2006). Rusty challenges all three of these findings, as well as the finding that it was in J.R.M.'s best interests to be adopted by James and Susan. See Ind. Code § 31-19-11-1(a)(1).

The following is the evidence most favorable to the judgment. J.R.M. was born in January 2003. Three months later, after Rusty and Lacey took him to "a working meth lab," he was placed with James and Susan. Transcript at 53. J.R.M. was adjudicated a child in need of services in August 2003.

Rusty was incarcerated from April to August 2003 and again from August to November 2004. He attended some supervised visitations with J.R.M., but according to

Deborah Beddow, a family case manager with Vigo County, Rusty's attendance "was hit and miss. . . . He would show up for a couple visits, then he would be late or he would not show. It was kind of half and half." Id. at 62. Susan testified as follows regarding supervised visitations that occurred in late 2003:

Q: Do you know as you sit here today how often those visits were?

A: Well, they were supposed to be weekly, but there was more no-shows than there was visits.

Q: Now, when you say no-shows, is that Lacey was a no-show or [Rusty] was a no-show?

A: Both of them had done it.

Q: Do you know why [Rusty] did not show up for visitation on those occasions?

A: No, I don't. This one time he made the remark he didn't like to get up early and he didn't like early morning visits.

Q: Did he ever indicate to you that he had to work?

A: No. It was always set up when he wouldn't be working.

Q: Were you present for those visitations?

A: Some of them, yes.

Q: And . . .

A: Well, I take that back. We were all the time at Friends and Family.

Q: But were you in the room when the visitations were going on?

A: Yes.

Q: And why was that?

A: They just let us stay, because [J.R.M.] was so afraid of [Rusty] they felt he'd be more at ease with us there.

Q: And [Rusty] did interact with [J.R.M.] during that period of time? Is that correct?

A: Sometimes.

Q: Okay. And . . .

A: The majority of the times he was too busy talking to other people there visiting kids.

Id. at 12-13.

On January 6, 2004, with Rusty's consent, the trial court appointed James and Susan as J.R.M.'s guardians and ordered Rusty to pay \$30 per week in child support. From then to the hearing in December 2007, a period of almost four years, Rusty paid no support at all. Rusty called James and Susan twice in 2004, once on J.R.M.'s first birthday and once to demand that J.R.M. go to Rusty's home in Illinois every other weekend. The next time Rusty contacted James and Susan was in response to their petitioning for adoption in January 2005.

As to whether Susan thought Rusty was capable of caring for J.R.M., Susan stated,

No, I don't. He moves around all the time. He has different girls all the time. He's been in trouble for domestic, drugs, alcohol. It just seems to be a continuous pattern with him. He couldn't provide any stability.

Id. at 27. James testified,

A: I believe [Rusty] proved himself during that period of time to have abandoned the child. I believe that he is never made any contributions to the child – period – in the two and a half to three months in which he had him. I believe that [J.R.M.'s] life with Susan and I would be a much richer and fuller life, because of not that money is an issue, but our commitment to [J.R.M.], our commitment to raising children that are both God-fearing and productive to society. That's what I'm committed to.

Q: And what would it mean to you personally if the court were to grant this adoption?

A: It would be the best day of my life. Nothing could be compared to it.

Q: And if they didn't?

A: It would be devastating. It would not only be devastating for me, but for [J.R.M.], because that would mean other things would be happening that could cause [Rusty] to get [J.R.M.] and I don't think that would be good for [J.R.M.] at all. I don't think [J.R.M.] could take the stress of that.

Id. at 47-48. Rusty testified that he had six residences from April 2003 to December 2007.

When not in prison, Rusty was self-employed as a contractor and had "a few" regular jobs.

Id. at 120. "When times get slow I gotta go find other work." Id. When asked why he had not paid a dime in support, he replied that "[t]he agreement was supposed to be that I wasn't supposed to. That was the agreement on me signing the temporary guardianship." Id.

At the time the petition was granted, J.R.M. was almost five years old. Except for his first three months, he was always in the custody of James and Susan. They had been married nineteen years. Susan worked in the home, raising J.R.M. and their children, while James had served as a correctional officer for more than eighteen years. They took J.R.M. to the doctor and to regular dental checkups. Beddow found that,

[J.R.M.] was very well taken care of in their home. It was a safe, secure environment for him. Jim and Susan [] appeared to love him. They were very cooperative with Rusty and Lacey. They cooperated with our department. It seemed to be a very good environment.

Id. at 63-64.

There was evidence that Rusty contributed no financial support to J.R.M. Even when

not in prison, Rusty communicated very little with his son. In consideration of the facts most favorable to the judgment, the trial court did not clearly err in granting James and Susan's Petition for Adoption of J.R.M.

Affirmed.

RILEY, J., and BRADFORD, J., concur.